

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TONY M. SMITH,

Petitioner,

vs.

GREGORY COX, *et al.*,

Respondents.

2:11-cv-01697-PMP-GWF

ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro se*. The petition is currently pending before the court for resolution on the merits. In order to address the merits, the court requires additional records from petitioner's criminal trial. Respondents' main argument set forth in their answer is that the use of the so-called *Kazalyn* jury instruction on first-degree murder was harmless error. The court cannot fathom how respondents determined that at least an entire day of the transcript of the jury trial—particularly the day that both the defendant testified and that the jury heard the taped, prior inconsistent statement of his former co-defendant—was not relevant to the adjudication of this petition.

At any rate, the court orders respondents to file a supplemental exhibit containing the full and complete trial transcript from petitioner's jury trial, including the trial transcript dated December

1 3, 1998, the jury verdict, the jury instructions, all proposed jury instructions, and the transcript of any
2 hearings pertaining to the jury instructions **within twenty-one (21) days** of the date of this order.

3
4 **IT IS SO ORDERED.**

5 Dated this 1st day of November, 2012.

6 
7 UNITED STATES DISTRICT JUDGE